

7-20-2011

State v. Two Jinn, Inc. Appellant's Brief Dckt. 38620

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Two Jinn, Inc. Appellant's Brief Dckt. 38620" (2011). *Not Reported*. 225.
https://digitalcommons.law.uidaho.edu/not_reported/225

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

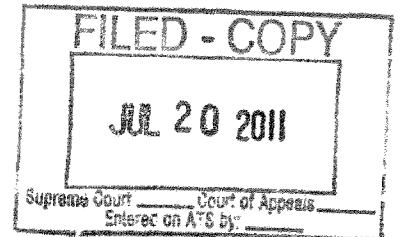
STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
vs.)
)
TWO JINN, INC, dba ALADDIN BAIL)
BONDS/ANYTIME BAIL BONDS,)
)
Real Party in Interest-Appellant)
)
And)
)
NESTOR RIVERA,)
)
Defendant.)
_____)

Supreme Court Case No. 38620

OPENING BRIEF OF APPELLANT

Appeal from the District Court of the Third
Judicial District of the State of Idaho
In and For the County of Canyon

HONORABLE RENAE J. HOFF
Presiding Judge



Robyn Fyffe
NEVIN, BENJAMIN, McKAY, & BARTLETT, LLP
P.O. Box 2772
Boise, ID 83701
(208) 343-1000

Lawrence Wasden
IDAHO ATTORNEY GENERAL
Andrew Snook
PO Box 83720
Boise, ID 83720-0010
(208) 334-4550

Attorneys for Appellant

Attorneys for Respondent

TABLE OF CONTENTS

I. Table of Authorities	ii
II. Statement of the Case	1
A. Nature of the Case	1
B. General Course of Proceedings	1
III. Issue Presented on Appeal	3
Did the district court err as a matter of law in refusing to exonerate the bond because Rivera was not released from the sheriff's custody and the reinstatement was ineffectual?	
IV. Argument	3
V. Conclusion	5

I. TABLE OF AUTHORITIES

FEDERAL CASES

<i>Taylor v. Taintor</i> , 83 U.S. 366 (1872)	3
---	---

STATE CASES

<i>State v. Sheahan</i> , 139 Idaho 267, 77 P.3d 956 (2003)	3
---	---

STATUTES

I.C. § 19-2911	2, 3, 4
I.C. § 19-2914	3
I.C. § 19-2916	4
I.C. § 19-2922(5)	1

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the district court's order denying Two Jinn, Inc.'s ("Two Jinn") motion to set aside forfeiture and exonerate bond.

B. General Course of Proceedings

On September 20, 2009, Two Jinn posted a \$50,000 bail bond to secure Rivera's release pending charges of trafficking in cocaine. R. 5, 18. Rivera subsequently appeared in court on October 9, 2009 and January 19, 2010. R. 20-21, 30. On March 4, 2010, Rivera did not appear in court because he was being held at an immigration facility in Utah. R. 32-33. The district court forfeited the \$50,000 bond and issued a warrant for Rivera's arrest setting bail in the amount of \$2,000. R. 32.

Rivera was returned to Idaho and appeared in Court on March 26 and April 9, 2010. R. 37-38. The prosecutor informed the district court that bond had been set in Rivera's immigration case and that the prosecutor would be contacting the bail agent regarding reinstatement of the previously posted bond. R. 38. On April 15, 2010, Two Jinn filed a motion to exonerate the forfeiture pursuant to I.C. § 19-2922(5), which provides for exoneration when the defendant appears before the court within one hundred eighty days of the forfeiture. R. 39-40.

Before the district court ruled on Two Jinn's motion, the prosecutor and Rivera filed a stipulation to quash warrant and reinstate previously posted bond. R. 44. In the stipulation, the prosecutor and Rivera indicated that he "missed his last court date due to no fault of his own when Immigration authorities took him to Utah." *Id.* The district court granted the stipulation on April 21, 2010 and annotated the order "general counsel for bail has been notified and agrees

to order.” R. 45.

Contrary to the state’s representations, Rivera had not posted bond in the immigration case and, instead, the immigration hold was in place. *See* R. 93. As a result, once the district court reinstated Rivera’s bond, Rivera’s custody was transferred directly to immigration. *See id.* Rivera did not appear in court for a pre-trial conference on May 25, 2010 and the district court again ordered the bond forfeited. R. 47. On June 7, 2010, Two Jinn filed a Notice of Location of Defendant which indicated that Rivera was in federal custody in Utah and possibly scheduled to be deported on June 10, 2010. R. 50. The state did not seek to have Rivera returned to Idaho and he was deported to Mexico on July 1, 2010. *See* R. 83.

Two Jinn filed a second motion for relief from forfeiture, arguing in part that the reinstatement of Rivera’s bond was ineffectual because Rivera’s custody transferred to immigration instead of Two Jinn and he was therefore not released from the sheriff’s actual custody as contemplated by I.C. § 19-2911. R. 61. At a hearing on Two Jinn’s motion, the prosecutor inexplicitly¹ argued that Two Jinn’s motion should be denied because it agreed to post the bond “the second time” when it should have known Rivera would “simply going to be detained on an immigration hold for a second time and shipped out.” Tr. p. 7-8. Two Jinn clarified that no second bond was purchased but that Two Jinn had informed the prosecutor it did not object to reinstatement after the prosecutor represented that the immigration issue was

¹The prosecutor who appeared on the state’s behalf at the hearing on Two Jinn’s motion for relief from forfeiture was the same prosecutor who had informed the district court that Rivera posted bond in his immigration case and who signed the stipulation to reinstate the bond. *Compare* R. 38, 44 *with* Tr. p. 3, ln. 13-14; *see also* R. 47. Thus, the prosecutor’s argument that Two Jinn should have known that Rivera would be deported certainly appears inconsistent with his previous representations to the district court that the immigration issue had been resolved and his stipulation to reinstatement the bond.

resolved and that Rivera would be cooperating with the state. Tr. p. 10, ln. 16-25. The district court denied relief. R. 104, 116-122. This appeal follows.

III. ISSUE PRESENTED ON APPEAL

Did the district court err as a matter of law in refusing to exonerate the bond because Rivera was not released from the sheriff's custody and the reinstatement was ineffectual?

IV. ARGUMENT

Upon the posting of bail, “the defendant shall be released from the actual custody of the sheriff.” I.C. § 19-2911. “When bail is given, the [defendant] is regarded as delivered to the custody of his sureties.” *State v. Sheahan*, 139 Idaho 267, 283, 77 P.3d 956, 972 (2003); *citing Taylor v. Taintor*, 83 U.S. 366, 371–72 (1872). Once delivered into the surety's custody, the surety or its agent may arrest the defendant and surrender him to the sheriff's custody. I.C. § 19-2914. These authorities contemplate that the defendant be released from the sheriff's actual custody to the custody of the surety upon posting or reinstating bail.

Because the prosecutor was incorrect and Rivera had not posted bond in the immigration case, Rivera's custody was transferred directly from the sheriff to immigration and Two Jinn never re-gained his custody. Accordingly, there was no release as contemplated by Section 19-2911 and the reinstatement was ineffective. With no effective reinstatement, there could be no forfeiture and Two Jinn was entitled to relief based on Rivera's prior appearance within 180 days. The district court therefore erred in denying Two Jinn's motion for relief from forfeiture as a matter of law.

In denying Two Jinn's request for relief from forfeiture, the district court incorrectly found that the “State and Two Jinn filed a Stipulation to Quash Warrant and Reinstate Previously

Posted Bond of \$50,000.” R. 117. The district court also found that “instead of surrendering the defendant and seeking to have the forfeiture set aside, Two Jinn reinstated the bail.”² R. 120.

Although Two Jinn did not object to the reinstatement based on the state’s representations there was an immigration bond, the stipulation was plainly entered by the state and Rivera and was not signed by Two Jinn. Further, Two Jinn could not surrender the defendant once he was in custody on the warrant and did file a motion for relief from forfeiture based on Rivera’s appearance on that warrant. The court may set aside the order of forfeiture and reinstate bail if the defendant appears in court and satisfactorily explains his failure to appear. I.C. § 19-2916. The bail agent’s agreement to reinstatement is unnecessary and, instead, the court must provide written notice of the reinstatement within five days. *See id.* The instant situation can be easily distinguished from the case where the bail agent sought the reinstatement³ or represented that the immigration status was resolved. Instead, Two Jinn, like the district court, relied on the prosecutor’s representations that the immigration issue was resolved.

Rivera was not released to Two Jinn’s custody upon the district court’s order reinstatement the bond. Because there was no actual release from custody as contemplated by I.C. § 19-2911, the reinstatement and the subsequent forfeiture were thus ineffectual.

² These findings occur in the district court’s analysis of whether justice required enforcement of the forfeiture – a ruling Two Jinn does not challenge on appeal. However, although Two Jinn raised the argument that the reinstatement was ineffectual because Rivera was not released to its custody as a distinct argument from the justice argument, the district court did not analyze them separately.

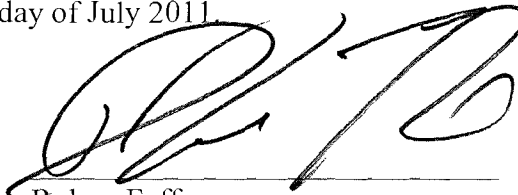
³As illustrated by this case, it is unclear why a bail agent would seek to have a bail bond reinstated. Because a reinstatement simply reinstates the previously posted bond, no second bond is purchased and the bail agent does not receive additional funds from the defendant. Here, by securing reinstatement of the previously posted \$50,000 bond, Rivera avoided having to pay the costs associated with purchasing second \$2,000 bail bond, which is the amount of bond set on the warrant after Rivera initially failed to appear. *See* R. 35-36.

Accordingly, the district court erred in not granting Two Jinn's motion for relief from forfeiture based on Rivera's appearance in court within 180 days of the initial forfeiture.

V. CONCLUSION

Two Jinn respectfully asks that this Court vacate the district court's order denying its motion to set aside the forfeiture and enter an order exonerating the bond.

Respectfully submitted this 20 day of July 2011



Robyn Fyffe
Attorney for Two Jinn, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of July, 2011, I caused two true and correct copies of the foregoing to be mailed to:

Office of the Attorney General
Civil Litigation Unit
Andrew Snook
P.O. Box 83720
Boise, ID 83720-0010



Robyn Fyffe